

1983 April 11

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

ANDREAS STAMATARIS AND ANOTHER,

Appellants.

v.

THE POLICE,

Respondents.

(Criminal Appeals Nos. 4400 and 4402).

Remand order—Appeal—Principles on which Court of Appeal interferes with a remand order.

5 *Remand Order—Crime of conspiracy—Process of investigation of not completed before participants are identified and the details established—Remand of the suspect justified even though facts relevant to his complicity became apparent.*

10 *Remand order—Discretion of Judge—Burden of proof—Principles applicable—Reasonable suspicion of involvement in the crime under investigation a prerequisite to remanding a suspect in custody—When is a suspicion reasonable—Renewal of remand order—Prosecution must satisfy the Court that time that elapsed was properly utilised for the investigation of the crime and that the prolongation of the remand is reasonably necessary for the investigation—Article 11.2(c) of the Constitution and section 24*
15 *of the Criminal Procedure Law, Cap. 155.*

20 The appellants were arrested on the 5th March, 1983 and subsequently remanded in custody for four consecutive weeks, for possession and import of narcotics and a conspiracy associated therewith. On the 7th April, 1983, they were remanded in custody for a further period of eight days—the fifth remand order—on the application of the investigating officer.

25 Before ordering the remand of the suspects for a further period of eight days, the Judge heard evidence from the investigating officer on the progress of the investigation and the circumstances necessitating, in his view, the prolongation of the

detention of appellants. From the evidence, it appeared that the crimes under investigation were of exceptional gravity, committed within the framework of a conspiracy transcending the bounds of Cyprus.

Upon appeal against the fifth remand order Counsel for appellant 1 contended that once the facts relevant to the complicity of his client in the conspiracy came to light, there was no justification for the prolongation of his detention in order to uncover every aspect of the conspiracy. Counsel relied on the provisions of Article 11.2(c) of the Constitution and argued that authority for the remand of a suspect in custody is constitutionally restricted to investigations solely concerning the commission of a crime by the suspect.

Counsel for appellant No. 2 contended that no grounds were disclosed justifying the formation of a reasonable suspicion connecting him with the commission of the crimes under investigation.

Held, (after stating the principles on which the Court of Appeal interferes with a remand order—vide p. 111 post) that the investigation into the commission of a crime is not completed when its nature is established, nor does the process of investigation come to an end vis-à-vis any participant in the crime when his complicity becomes apparent or certain; that the circumstances under which the crime was committed entailing discovery of the culprits as well, may cast a wholly different complexion on the nature of the crime; that in the case of conspiracy, bearing in mind the definition of the crime (see s. 371 of the Criminal Code Cap. 154) identification of the participants to the crime and details thereto are facts highly relevant to the investigation of the crime; that the process of investigation of the crime of conspiracy is not completed before the participants are identified and the details established; accordingly the appeal of appellant 1 must fail.

(2) *(After dealing with burden of proof) that reasonable suspicion of involvement in the crime under investigation is a prerequisite to remanding a suspect in custody (see Article 11.2(c) of the Constitution and s.24 of the Criminal Procedure Law, Cap. 155); that in dealing with an application for remand a Judge has to ascertain whether the suspicion is genuinely enter-*

5 tained: that a suspicion is reasonable if evidence, in the hands of the Police, reasonably connects the suspect with the commission of the crime under investigation; that in an application to renew a remand order the Prosecution must satisfy the Court that the time that elapsed was properly utilised for the purpose the order was granted, that is, for the investigation of the crime under consideration and that the prolongation of the remand is reasonably necessary for the investigation; that the trial Judge who dealt with the application, faced the issue before him in 10 the right perspective and nothing we heard justified interference with the exercise of his discretion; accordingly the appeal of appellant 2 must, also, fail.

Appeals dismissed

Cases referred to:

- 15 *Hasip v. The Police*, 1964 C.L.R. 48.
Papacleovoulou and Another v. The Police (1974) 2 C.L.R. 55;
R. v. Nottingham Justices [1980] 2 All E.R. 775 at p. 779.

Appeals against remand orders.

20 Appeals by Andreas Stamataris and Another against the orders of the District Court of Larnaca (Eliades, D.J.) made on the 7th April, 1983 whereby appellants were remanded in Police custody for eight days in relation to the investigation into the commission by them of the offences of illegal possession and importation of narcotics in Cyprus.

- 25 *A. Poetis*, for appellant 1.
N. Cleanthous, for appellant 2.
A. M. Angelides, Senior Counsel of the Republic, for the respondents.

30 HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikiis.

35 PIKIS J.: The appellants were arrested on 5.3.83 and subsequently remanded in custody for four consecutive weeks, for possession and import of narcotics and a conspiracy associated therewith. On 7.4.83 Eliades D.J. remanded them in custody for a further period of eight days - the fifth remand order and not the third as recorded by mistake in the judgment - on the application of Chief Inspector Prokopis Georghiou, the investigating officer.

Before ordering the remand of the suspects for a further period of eight days, the learned Judge heard evidence from the investigating officer on the progress of the investigation and the circumstances necessitating, in his view, the prolongation of the detention of appellants. From the evidence, it appears that the crimes under investigation are of exceptional gravity, committed within the framework of a conspiracy transcending the bounds of Cyprus. Since the discovery of the crimes of illegal possession and importation of narcotics in Cyprus and, the assumption of investigations, persons residing abroad have been active in making threats to various persons with a view to intimidating them into silence and disrupting the investigations. Apparently, the collaboration of the police forces of other countries has been enlisted in aid of the investigations, in order to elicit the conspiracy and every ramification of it. According to the evidence of the investigating officer, the remand of the appellants in custody, was still necessary, notwithstanding the effluxion of nearly a month since their arrest, in the interests of the proper investigation of the case, as well as the safety of the suspects themselves. Notwithstanding the endeavours of the Police, their investigations were not completed. The nature and magnitude of the crimes required lengthy investigations that could not have been concluded within the period of about a month that elapsed.

On behalf of the appellants, we were invited to hold that the material before the Court was insufficient to support the application. The main ground urged before us for appellant 1 vitiating, in the submission of his counsel, the order made, was that the Judge took into account an irrelevant consideration invalidating the exercise of his discretion. The extraneous factor that was allowed to influence the Judge, was the amenity the Police was recognised to enjoy to inquire in the context of this investigation into details of the conspiracy relating to parties to it other than the suspect. In the submission of counsel, once the facts relevant to the complicity of his client in the conspiracy came to light, there was no justification for the prolongation of his detention in order to uncover every aspect of the conspiracy. Counsel relied on the provisions of Article 11.2(c) of the Constitution and argued that authority for the remand of a suspect in custody is constitutionally restricted to

investigations, solely concerning the commission of a crime by the suspect.

5 The essence of the submission pressed before us on behalf of appellant 2, is that no grounds were disclosed justifying the formation of a reasonable suspicion connecting him with the commission of the crimes under investigation. The Judge held otherwise. He rested his decision on the material before him that extended to examination of certain aspects of documentary evidence in the possession of the Police.

10 Decision for the remand of a suspect in custody for purposes of investigation, as well as its renewal, rests with the Judge dealing with the remand application. He must evaluate the material before him and make a decision whether to remand the suspect in custody or not, guided by the principles relevant to
15 the exercise of his discretion. (See, inter alia, *Hasip v. The Police*, 1964 C.L.R. 48). It is now well settled that an appeal lies from a remand order. It is unnecessary to explore the procedural basis for this right; suffice it to say that if no right to appeal existed, the demands of freedom alone would justify the
20 acknowledgment of such a right. An appeal against a remand order is not by way of rehearing. Our jurisdiction is confined to determining whether the Judge exercised his discretion judicially. (See, *Yiannakis Papacleovoulou and Another v. The Police* (1974) 2 C.L.R. 55). This, in turn, entitles the Supreme
25 Court to examine the principles that guided the Judge in the exercise of his discretion and matters taken into consideration. If the Judge applied the correct principles and did not pay heed to facts extraneous to a remand order, there is no room for interference by an appellate bench. We are not required on
30 appeal to evaluate the facts relevant to the exercise of the Judge's discretion, that is exclusively the task of the Judge determining the remand order. It is impermissible to substitute our discretion for that of the trial Judge. He is in law the arbiter of the remand application. So long as he acts judicially, his decision
35 must be upheld.

No suggestion was made that the Judge misdirected himself on the principles that should govern the exercise of his discretion. On the contrary, as one may gather from his ruling, he was fully aware of the relevant principles and sought to apply them to

the facts of the case. He was live to the fact that the burden to justify a remand order rests on the Police Authorities, as well as that such burden becomes progressively heavier with every new application for the remand of the suspect in custody. The principle that should guide the Courts in this area, is this:

5

The burden of proof rises in direct proportion to the length of the period of detention for which it is sought to detain the subject. The longer the period to detain the subject becomes, correspondingly higher becomes the burden cast upon the authorities to justify the limitation of freedom.

10

Reverting to the complaint of appellant 1, as to abuse of the discretionary powers of the Court, the submission of counsel that a person in custody cannot be remanded for the investigation of a crime other than that for which he was arrested, is a sound one. A further period of detention of a person in custody, can only be approved in order to facilitate investigation into a crime for which he is detained. But we are unable to uphold the submission, totally unrelated to the principle just mentioned that, Article 11.2(c) of the Constitution limits the power of the Court to remand one of two, or more persons, suspected of participation in a crime after his complicity has become reasonably apparent. The argument here is that, inasmuch as appellant 1 had made a statement which, judged with other evidence collected by the Police, tended to establish his complicity, if any, in the crime, it was impermissible for the Police Authorities to ask for the prolongation of his detention for the purpose of unravelling the case in its entirety. The investigation into the commission of a crime is not completed when its nature is established, nor does the process of investigation come to an end vis-a-vis any participant in the crime when his complicity becomes apparent or certain. The circumstances under which the crime was committed entailing discovery of the culprits as well, may cast a wholly different complexion on the nature of the crime. And, in the case of conspiracy, bearing in mind the definition of the crime supplied by s.371 of the Criminal Code - Cap. 154, identification of the participants to the crime and details thereto are facts highly relevant to the investigation of the crime. In our judgment, the argument pressed on behalf of appellant 1 is misconceived. The process

15

20

25

30

35

of investigation of the crime of conspiracy is not completed before the participants are identified and the details established.

5 The case for appellant 2 is that the material before the Court did not raise against him a reasonable suspicion of complicity in the crime. Reasonable suspicion of involvement in the crime under investigation is a prerequisite to remanding a suspect in custody. This is manifest from the provisions of Article 11.2(c) of the Constitution and a reading of s.24 of the Criminal Procedure Law, subject to and in accordance with the provisions of the aforementioned fundamental article of the Constitution. (See, Article 188.1 of the Constitution). Reasonable suspicion must exist at every stage of the investigation: at the time of arrest and on every subsequent application for the remand of the suspect in custody.

15 The task of the Judge dealing with an application for remand is twofold:-

- 20 (a) To ascertain whether the suspicion is genuinely entertained. This is essential in order to eliminate the possibility of the Police Authorities abusing their powers to seek the remand of a suspect in custody.
- 25 (b) To decide whether the suspicion is reasonable. It is reasonable if evidence, in the hands of the Police, reasonably connects the suspect with the commission of the crime under investigation. The Judge in this case formed the view that the suspicion of the Police Authorities was reasonable.

30 In examining the grounds upon which the Police based their application, he went so far as to examine part of the police file on the case, a course indicative of the care with which the Judge approached the application of the Police. Neither appellant disputed the course followed by the trial Judge, nor are we asked in this appeal to pronounce on its correctness. We mention this fact in passing in order to stress the length to which the Judge went to examine the basis of the application.

35 The Judge dealing with a remand application has to discharge a fine task. He must strive to maintain a healthy balance between individual liberty on the one hand and, public interest

in the investigation and suppression of crime, on the other. As Donaldson, L.J. as he then was, observed in *R. v. Nottingham Justices* [1980] 2 All E.R. 775, 779, any unusual delay on the part of the Prosecution, is a factor militating for the release of the accused. The observations were made in the context of a delay to prosecute but apply with equal force to delays in the investigation of crime. 5

On an application, as in this case, to renew a remand order, the Prosecution must satisfy the Court that -

- (a) The time that elapsed was properly utilised for the purpose the order was granted, that is, for the investigation of the crime under consideration and, 10
- (b) the prolongation of the remand is reasonably necessary for the investigation.

The learned trial Judge who dealt with the application, faced the issue before him in the right perspective and nothing we heard justifies interference with the exercise of his discretion. The appeals are dismissed. 15

Appeals dismissed.